Mass. 367, he is responsible for acts of ordinary mis-feasance; *Pigeon* v. *Lane* (1907) 80 Conn. 237, 67 Atl. 886; others that he is liable only for acts of gross negligence. *Cf. Southcote* v. *Stanley* (1856) 1 H. & N. 247. There is, however, general acquiescence in the view that the passenger may recover for an injury caused by reckless driving. *Beard* v. *Klusmeier* (1914) 158 Ky. 153, 164 S. W. 319; *Fitzjarrell* v. *Boyd* (1914) 123 Md. 497, 504, 91 Atl. 547; see *Mayberry* v. *Sivey* (1877) 18 Kan. 291. Since ultimately each case must rest on its own facts, these distinctions are more technical than real. But in the jurisdiction of the principal case, gross negligence is akin to intentional misconduct, differing not merely in degree, but also in kind from ordinary negligence. *Galbraith* v. *West End Street Ry.* (1896) 165 Mass. 572, 43 N. E. 501. Hence the decision seems to imply that the owner is liable only for intentional injury. The court relied principally on the case of *West* v. *Poor* (1907) 196 Mass. 183, 81 N. E. 960 where a trespassing child who had been permitted to ride on a milk wagon by the acquiescence of the milkman, was not allowed to recover in the absence of showing "gross negligence". Since in the instant case the plaintiff was expressly invited to ride, her position is not at all analogous to that of the child in *West* v. *Poor, supra,* and the court in relying on the earlier decision reached a result which is against the weight of authority and not to be commended.

PUBLIC OFFICERS—CLERKS OF COURT—LIMITS OF LIABILITY ON OFFICIAL BOND—PRIVATE FUNDS.—Defendant clerk, by order of court, received money tendered into court by plaintiff and deposited it in a bank which subsequently failed. In an action on his official bond, *held,* he was liable therefor, even though the funds were private and not public. *People* v. *McGrath* (Ill. 1917) 117 N. E. 74.

If money is tendered to the clerk without court order while suit is pending, it is not received by him in his official capacity, *Commercial etc. Co.* v. *Peck* (1897) 53 Neb. 204, 73 N. W. 452, and no action on his bond may be maintained; *People* v. *Cobb* (1897) 10 Colo. App. 478, 51 Pac. 523; but if paid in pursuance of a court order, he receives it officially and the action will lie. *United States* v. *Howard* (1902) 184 U. S. 676, 22 Sup. Ct. 543. The limits of liability on the bond are unsettled as in the case of every public officer under bond. Throop, Public Officers §§ 221-229; 9 Columbia Law Rev. 639. Following the weight of authority in the case of other public officials, some courts have held court clerks absolutely liable for all funds paid to them in their official capacity. *Northern Pac. Ry.* v. *Owens* (1902) 86 Minn. 188, 90 N. W. 371; *Smith* v. *Patton* (1902) 131 N. C. 396, 42 S. E. 849. On the other hand, there is a persistent common law view which regards their liability as solely that of a bailee, Story, Bailments § 620, and courts following this view have not permitted suits on the bond in cases like the principal case. *Wilson* v. *People* (1893) 19 Colo. 199, 34 Pac. 944; *cf. Aurentz* v. *Ponter* (1867) 56 Pa. 115. The confusion arises from the fact that court clerks handle both public and private moneys. Fees, costs and fines collected by them are public moneys which, because of considerations of policy, have been protected. 9 Columbia Law Rev. 639. The reasons, it is suggested, are similar to those for the rule, in some jurisdictions, that public funds are entitled to a preference in the event of insolvency of banks. *Matter of Carnegie Trust Co.* (1912) 206 N. Y. 390, 99 N. E. 1096; *contra, Phillips* v. *Gillis* (1916) 98 Kan. 383, 158 Pac 23. But money tendered into

court to await judgment is not public money. *Branch* v. *United States* (U. S. 1876) 12 Ct. Cl. 281, 289; see *People ex rel. Nash* v. *Faulkner* (1887) 107 N. Y. 477, 14 N. E. 415; *Gartley* v. *People* (1901) 28 Colo. 227, 64 Pac. 208. It cannot be expended for public uses and it ought no more be protected than any other private property held under judicial process to await the outcome of the trial. In such a case the officer's liability is that of a bailee and not an insurer. *Browning* v. *Hanford* (N. Y. 1843) 5 Hill 588; see *Norris* v. *McCanna* (1886) 29 Fed. 757. There is, however, authority in support of the principal case depending upon a strict interpretation of the condition of the bond requiring the clerk to "pay over all moneys that may come into his hands by virtue of his office". *Morgan* v. *Long* (1870) 29 Iowa 434; *Northern Pac. Ry.* v. *Owens, supra.*

PUBLIC OFFICERS—COMMENCEMENT OF TERM.—The petitioner for a writ of mandamus alleged that he had been elected judge. Because of an error in the canvass his commission was not issued until three weeks later. In the meanwhile the governor of Illinois signed a bill increasing the salary of judges. There was no time mentioned in the statutes at which the term of office should begin. *Held,* the petitioner was not entitled to the increase, since it was granted within his term of office, and hence within the constitutional provision that salaries shall not be changed during an incumbent's continuance in office. *People ex. rel. Holdom* v. *Sweitzer* (Ill. 1917) 117 N. E. 625.

It is usual for statutes creating offices to designate the time when the term shall begin. In the absence of such provision, the general view is, that the term of office starts from the date of the election. *Macoy* v. *Curtis* (1880) 14 S. C. 367. Where there is no fraud, an error which does not vary the result, will not invalidate an election, *Town of Grove* v. *Haskell* (1909) 24 Okla. 707, 104 Pac. 56; *State ex. rel. Cole* v. *Chapman* (1878) 44 Conn. 595, 601, see Mechem, Public Officers, § 184, and since the candidate who receives the highest number of votes is the one elected, in spite of an erroneous certificate issued to his opponent, such certificate being only prima facie evidence of title to the office, *State ex. rel. Waymire* v. *Shay* (1884) 101 Ind. 36; *Wicks* v. *Jones* (1862) 20 Cal. 50, it seems to follow that the election is determined immediately at the close of the voting. The effect of a commission is merely to give notice to the person elected of such fact, and he can validly take office without ever receiving such notification. *Shuck* v. *State ex rel. Cope* (1893) 136 Ind. 63, 35 N. E. 993. Hence, because the law for the increase was passed after the date of election it would seem that the court reached the proper conclusion in denying the petitioner's claim for the increased salary.

SALES—ACCEPTANCE—PERISHABLE GOODS.—The plaintiff's assignor shipped dressed turkeys of a different description from those ordered by the defendant. The latter telegraphed the plaintiff of the noncompliance stating that he would not use the goods and, before he could receive a reply, sold the turkeys. In an action for the purchase price, it was *held* that the trial court was in error in withdrawing the determination of the fact of acceptance from the jury. *White* v. *Schweitzer* (1917) 221 N. Y. 461, 117 N. E. 941.

Although in a sale of unascertained goods, in the absence of special agreement, the title will pass upon a delivery to the carrier for the benefit of the vendee, Benjamin, Sales (5th ed.) 350, it will not so pass